

## **REMARKS**

### **AMENDMENTS TO THE CLAIMS**

The specification has been amended at Paragraph [0038] to correct an obvious typographical error.

### **AMENDMENTS TO THE CLAIMS**

Claims 1 and 11 have been amended at the suggestion of the Examiner to correct some possible technical problems with the claims. As such, these amendments do not constitute new matter.

Additionally, it should be noted that applicants believe that the phrase as originally found in Claim 1 "... thereby creating an impression of movement of said first and second audio works **in** a listener" was syntactically correct, it has been changed at the suggestion of the examiner.

Because all of the foregoing merely correct typographical errors, such amendments do not constitute new matter and the Examiner's objections associated therewith have been made moot and should be withdrawn.

## **CLAIM OBJECTIONS AND REJECTIONS**

### **Rejections Under 35 U.S.C. 102(a) or 102(e)**

Claims **1, 2, 11, and 12** stand as rejected under 35 USC 102(e) as being anticipated by - Cliff (US 2002/0172379 A1). It is said that Cliff discloses a method of generating a sound transition between a first audio work and a second audio work, wherein a first transition pattern is selected for said first audio work, a second transition pattern is selected for said second audio work and wherein said transition pattern creates a sense of movement in a listener. The first and second transmission patterns are said to provide an audio transmission between said first and second audio works. The transition is said to be played through said audio speakers according to the selected transition patterns, thereby creating an impression of movement in the listener.

As an initial matter, it should be noted that, in speaking of anticipation under Section 102, the Federal Circuit held in *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) that:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

*Accord: W.L. Gore & Associates v. Garlock, Inc.*, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984) that:

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.

By way of summary of the arguments that follow, applicants respectfully contend that the Examiner is just mistaken in the statement that Cliff discloses a method that includes transition patterns that impart an impression of movement in a listener. Since it cannot be said that Cliff discloses each and every element of the instant invention, the instant rejection should be withdrawn.

Turning first to the rejection of Claim 1, consider the following exemplary passage from the instant application "Summary of the Invention" at Paragraph [0013]:

In a first preferred embodiment during the ending, or "outro", of a first song, the volume of each speaker is adjusted to create the audio illusion that the first/ending song is moving away from the listener in a first direction. Simultaneously, the volume of each channel of the second/beginning song is adjusted to create the audio illusion that the second song is moving toward the listener from a second direction.

Nowhere within Cliff is there a teaching or suggestion that the relative volumes and apparent audio locations of an ending audio work and a starting audio work might be varied in such a way as to create the impression that there is movement in the audio source during the transition from one work to the next.

Cliff discloses a system and method for equalizing the amplitudes of a starting and an ending audio work so that audio "clashes" between them do not occur during the transition from one to the other. Cliff suggests approaches such as equalizing the amplification of each work (increasing the amplitude of the incoming work at the same rate as the volume in the outgoing work is decreased, paragraph [0003]), equalizing the amplification of each work based on intrinsic amplitudes determined by summing sampled values (paragraph [0011]), equalizing the amplitudes of each work via predetermined playin / payout templates, and, more fundamentally, equalizing volumes by analyzing time / frequency dependencies in the two musical works (paragraph [0020]).

Of course, none of Cliff's embodiments discloses or suggests applicants' method which involves creation of an impression in the listener that incoming and outgoing sound sources are in motion. Further, the Examiner has failed to provide a citation to Cliff that supports his

assertion that Cliff discloses “creating an impression of movement of said first and second audio works in a listener” (Office Action at page 3).

Indeed, the word “movement” does not occur within the Cliff reference, nor does “move”, “perception” or “impression.”

As such, it is believed that the cited reference fails to disclose each and every element of the instant invention as set out in the claims, as such, the instant rejection under Section 102 of Claim 1 is improper and should be withdrawn.

Turning next to the rejection under Section 102(e) of Claim 2, it is said that Cliff discloses a method according to Claim 1 wherein a master transition pattern is selected and wherein the transition between the first and second audio works can be controlled by a single master power amplifier known as a cross-fader. The cross-fader is said to provide a means for selecting the amount of amplification in a transition between the first and second audio works.

In reply, applicant would note that at least for all of the reasons identified above, the rejection of this claim is believed to be improper. Most specifically, Claim 2 of the instant invention (depending as it does from Claim 1) calls for the selection of a master transition pattern that implements both a first and a second transition pattern, wherein the first and second transition patterns impart a sense of motion to the sound source. Nothing in Cliff teaches or suggests applicants' motion transition concept.

As such, it is believed that the cited reference fails to disclose each and every element of the instant invention instant rejection as set out in the Claim 2. Thus, the instant rejection under Section 102 is improper and should be withdrawn.

Turning next to the rejection of Claim 11, it is said that Cliff discloses, among other things, a method of transitioning between a first and a second audio work, wherein said first transition pattern provides “an audible impression of movement of said first audio work when said first audio work is played according to said first transition pattern through said plurality of audio speakers...”, Page 4 of the Office Action.

In reply, applicants would once again state that they could find no instance within Cliff wherein there is any suggestion or disclosure of a transition pattern that results in a perception of movement within a listener when the transition pattern is applied.

Indeed, the word “movement” does not occur within Cliff, nor does “move”, “motion”, “perception” or “impression.”

It is further said that “it is implied that as a signal from a first audio source is faded out that is [*sic*] will no longer become audible to a listener as a second signal from a second audio source is faded in...”. Pages 4-5 of the Office Action. However, that is not what the applicants have invented. Applicants have invented a transition scheme that improves over the prior art practice of simply fading out a first song as a second fades in. The instant invention transitions between two songs by creating an impression of movement of the sound source, a method which is clearly different from the well known prior art fade out / fade in methodology.

Finally, there is no suggestion or discussion in Cliff that two different patterns – each of which has been selected to create a complimentary sense of movement as compared with the other – might be utilized to transition between audio works.

As such, it is believed that the cited reference fails to disclose each and every element of the invention as set out in the Claim 11, and the rejection under Section 102 is improper and should be withdrawn.

Turning next to the rejection of Claim 12, it is said that Cliff discloses a method according to Claim 11, wherein the steps of selecting said first and second transition patterns are accomplished by selecting a master transition pattern which includes both said first and said second transition patterns therein. It is further said that Cliff discloses that the variable gain amplifiers which control the transition pattern between the first and second audio works can be implemented in a single “master” power amplifier known as a cross-fader. (Office Action, at page 5).

In reply, applicants would point out that, for at least all of the reasons set out above, the instant rejection is improper. In more particular, Cliff does not teach or suggest the use of a master transition pattern which contains two patterns therein, each of which is designed to create a sense of motion as perceived by a listener.

Since a proper rejection under Section 102 requires that the prior art reference contain each and every claimed element set out as in the claim (e.g., *Lindemann Maschinenfabrik*, supra), it is believed that the instant rejection of Claim 12 is improper and should be withdrawn.

### **Rejections Under 35 U.S.C. 103(a)**

Claims 4-10 and 14-20 stand as rejected under 35 USC 103(a) as being unpatentable over Cliff (US 2002/0172379 A1) in view of Cleary, Jr. et al. (US 6,977,653).

Turning first to the case law on the matter, recall that the burden is on the *Examiner* to provide evidence of obviousness (emphasis added). *See, In re Fritch*, 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992):

**In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. . . .** "[The Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988).

Further, the Federal Circuit has mandated that a rejection under § 103(a) is only proper if there is a "teaching, suggestion, or incentive supporting the combination" relied upon. *In re Geiger*, 815 F.2d 868, 2 USPQ 2d 1276, 1278 (Fed. Cir. 1987). The Federal Circuit stated in *Akzo N.V. v. United States International Trade Commission*, 1 USPQ 2d 1241, 1246 (Fed. Cir. 1986), *cert. denied*, 482 U.S. 909 (1987), that:

[P]rior art references before the tribunal must be read as a whole and consideration must be given where the references diverge and teach away from the claimed invention. . . . Moreover, **appellants cannot pick and choose among individual parts of assorted prior art references "as a mosaic to recreate a facsimile of the claimed invention."**

(Emphasis added). *Accord: In re Fritch*, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992) (emphasis added):

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne **cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.**" (quoting *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988)).

Further, consider *In re Oetiker*, 24 USPQ 2d 1443, 1446 (Fed. Cir. 1992), wherein the Federal Circuit has made it clear that when combining references there must some suggestion or motivation *in the prior art* that teaches the combination relied upon:

The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is

insufficient to present a prima facie case of obviousness. **There must be some reason, suggestion, or motivation found in the prior art** whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from the applicant's invention itself.

*Accord: Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc.*, 30 USPQ 2d 1377, 1379-80 (Fed. Cir. 1994):

When the patented invention is made by combining known components to achieve a new system, **the prior art must provide a suggestion or motivation to make such a combination.**

(Emphasis added).

Turning now to the instant rejection under § 103 with respect to Claim 4, it is said that Cliff discloses a method according to Claim 1 further comprising the step of forming a graphical representation of said first and second transition patterns, wherein said graphical representation reflects at least approximately said impression of movement of said first and second audio works within said speakers. It is further said that, although Cliff does not expressly disclose displaying the graphical representation on a computer display device, Cleary discloses a display system that displays a graphical representation of the signal levels being reproduced on left and right channel speakers.

It is said that at the time the invention was made it would have been obvious to a person of ordinary skill in the art to use the display device of Cleary to display the information disclosed in the graphs of Cliff.

In reply, it should once again be noted that applicants could find no teaching or suggestion in Cliff that a transition pattern might impart a sense of movement of an audio source in a listener. As a consequence, the combination of Cliff and Clearly does not produce the applicants' invention nor does it yield any obvious variant thereof.



Further, neither Cliff nor Cleary – considered either alone or in combination – contains a teaching or suggestion that a transition between two songs might be accomplished via a transition pattern that creates an impression of movement of an audio source.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim 4 is improper and should be withdrawn.

Turning next to the rejection of Claim 5, it is said that Cliff discloses a method according to Claim 1, further comprising the step of forming a graphical representation of said first transmission pattern. It is further said that Cliff does not disclose expressly wherein said graphical representation has at least indicia thereon representing each of said audio speakers on a computer display device and representing said first transition pattern during the playing of said first audio work. Cleary is said to disclose a display system that has at least indicia thereon representing audio speakers and is further said to disclose the use of a graphical representation of the signal levels being reproduced on left and right channel speakers.

It is said that at the time the invention was made it would have been obvious to a person of ordinary skill in the art to use the display device of Cleary to display the information disclosed in the graphs of Cliff.

In reply, it should once again be noted that applicants could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that a transition pattern might impart a sense of movement of an audio source in a listener. As a consequence, the combination of Cliff and Cleary does not produce the applicants' invention, i.e., it does not teach or suggest a method of generating a sound transition that creates an impression of movement in the user and further

utilizes a graphical display representative of this special transition pattern that has indicia of the audio speakers displayed thereon.

Thus, it is believed that, at least for all of the above reasons, the instant rejection of Claim 5 is improper and should be withdrawn.

With respect to Claim 6, it is said that Cliff discloses a method according to Claim 5 in view of Cleary, wherein the indicia of said audio speakers are at least approximately spaced apart on said computer display device proportionally to an actual spacing of said audio speakers. It is further said that both Cliff and Cleary disclose figures containing representations of only two speakers, "hence no matter how they are presented on the display they will always be proportionally spaced with respect to the actual spacing of the speakers." Office Action at page 7.

In reply, applicants would note as an initial matter that the last of the Examiner's statements quoted above is not strictly true. That is, it is not always true that "no matter how they are presented on the display, they [the speakers] will always be proportionally spaced with respect to the actual spacing of the speakers." While that might be true for two speakers that are equally spaced on either side of a centered listener, that would not be the case if the speakers are asymmetrically positioned with respect to the listener, e.g., , the listener is not positioned along a line that is orthogonal to – and through the mid point of – a line segment that connects the two speakers.

That being said, and turning now to the substance of the instant rejection, it should once again be noted that applicants could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that a transition pattern might impart an audio sense of movement in a listener.

As a consequence, the combination of Cliff and Clearly does not produce the applicants' invention, i.e., it does not teach or suggest a method of generating a sound transition that creates an impression of movement in the user and further utilizes a graphical display representative of same that has indicia of the audio speakers thereon, wherein the actual spacing of the audio speakers is at least approximately proportionally displayed on the computer display device.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim 6 is improper and should be withdrawn.

Turning next to the rejection of Claim 7, it is said that Cliff discloses a method according to Claim 5 in view of Cleary, wherein step (f) comprises the step of displaying on a computer display device said graphical representation of said first transition pattern during the playing of said first audio work, wherein said display operates at least approximately in real-time and wherein said displayed graphical representation is continuously updated to reflect the operation of the first transition pattern. It is said that it is implied that the graphical display of Cleary continuously updates the information being displayed.

In response, applicants would again state that they could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that a transition pattern might impart a sense of a movement of an audio source in a listener. As a consequence, the combination of Cliff and Clearly does not produce the applicants' invention, i.e., the combination does not teach or suggest a method of generating a sound transition that creates an impression of audio movement in the user and further utilizes a display that is at least approximately in real-time and is updated to reflect the operation of the first transition pattern.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim 7 is improper and should be withdrawn.

Turning next to the rejection of Claim 8, it is said that Cliff discloses a method according to Claim 1 further comprising the step of forming a graphical representation of said second transition pattern. It is further said that Cliff does not disclose expressly wherein said graphical representation has at least indicia thereon representing each of said audio speakers and displaying on a computer display device said graphical representation of said first transition pattern during the playing of said first audio work. It is further said that Cleary discloses a display system that has at least indicia thereon representing audio speakers and that displays a graphical representation of the signal levels being reproduced on left and right channel speakers. Finally, it is said that at the time of the invention it would have been obvious to a person of ordinary skill in the art to use the display device of Cleary to display the information disclosed in the graphs of Figures 7A and 7B of Cliff.

In response, applicants could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that a transition pattern might impart a sense of audio movement in a listener. As a consequence, the combination of Cliff and Cleary does not produce the applicants' invention, i.e., it does not teach or suggest a method of generating a sound transition that creates an impression of movement of an audio source to a user and further utilizes a graphical display representative of same that has indicia of the audio speakers thereon, wherein a graphical representation of the first and second transition patterns are displayed during the playing of at least a portion of the second audio work.

Thus, for at least all of the reasons identified above, it is believed that the instant rejection of Claim 8 is improper and should be withdrawn.

Turning next to the rejection of Claim 9, it is said that Cliff discloses a method according to Claim 1 wherein at least a portion of said first transition pattern is provided by a user. It is said that it is implied that cross faders allow a DJ to manually adjust signal levels in a transition between multiple audio works.

In response, applicants could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that a transition pattern might impart a sense of audio movement in a listener. Of course, a cross fader is designed to smoothly substitute one audio source for another: Cliff does not suggest or teach the use of a cross fader to create an impression of movement as is taught in the instant invention. As a consequence, implementing a user-provided transition pattern that creates an impression of audio motion during the transition between a first and second audio works is similarly not disclosed or suggested in this reference or any other of record.

Thus, it is believed that, for at least all of the above reasons, the instant rejection of Claim 9 is improper and should be withdrawn.

Turning next to the rejection of Claim 10, it is said that Cliff discloses a method according to Claim 1 wherein at least a portion of the second transition pattern is provided by a user. It is said that it is implied that cross faders allow a DJ to manually adjust signal levels in a transition between multiple audio works.

In response, applicants could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that a transition pattern might impart a sense of audio movement in a listener.

As a consequence, implementing a user-provided transition pattern that creates an impression of audio motion during the transition between a first and second audio works is similarly not disclosed or suggested.

Thus, it is believed that, for at least all of the above reasons, the instant rejection of Claim **10** is improper and should be withdrawn.

Turning next to the rejection of Claim **14**, it is said that Cliff discloses a method according to Claim **11** further comprising the step of forming a graphical representation of said first transition pattern, wherein said graphical representation reflects at least approximately said impression of movement of said first audio work within said speakers. It is further said that Cliff does not disclose expressly wherein the method includes displaying on a computer display device said graphical representation of said first transition pattern during the playing of said first and second audio works, but that Cleary discloses a display system that displays a graphical representation of the signal levels being reproduced on left and right channel speakers.

In response, applicants could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that complementary transition patterns might be selected for use between two audio works, wherein each pattern provides an audible impression of movement in its respective audio work. As a consequence, a person of ordinary skill in the art when presented with Cliff and Cleary would have no reason to create an invention of the sort described by the instant invention and set out in Claim **14** and, more particularly, one that provides a graphical representation of the first transition pattern of the sort invented by the instant inventors.

Thus, it is believed that, for at least all of the above reasons, the instant rejection of Claim **14** is improper and should be withdrawn.

Turning next to the rejection of Claim **15**, it is said that Cliff discloses a method according to Claim **11** which further comprises the step of forming a graphical representation of said second transition pattern, wherein said graphical representation reflects at least approximately said impression of movement of said second audio work within said speakers. It is further said that Cliff does not disclose expressly wherein the method includes displaying on a computer device said graphical representation of said second transition pattern during the playing of said first and second audio works, but Cleary is said to disclose a display system that displays a graphical representation of the signal levels being reproduced on left and right channel speakers.

In response, applicants could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that complementary transition patterns might be selected for use between two audio works, wherein each pattern provides an audible impression of movement of an audio source in its respective work. As a consequence, a person of ordinary skill in the art when presented with Cliff and Cleary would have no reason to create an invention of the sort described by the instant invention and set out in Claim **15** and, more particularly, one that provides a graphical representation of the first transition pattern of the sort invented by the instant inventors.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim **15** is improper and should be withdrawn.

Turning next to the rejection of Claim **16**, it is said that Cliff discloses a method according to Claim **11** which further comprises the step of forming a graphical representation of said first transition pattern and that Cleary discloses a display system that has at least indicia

thereon representing audio speakers and displays a graphical representation of the signal levels being reproduced on left and right channel speakers.

In response, applicants could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that complementary transition patterns might be selected for use between two audio works, wherein each pattern provides an audible impression of movement in its respective audio work. As a consequence, a person of ordinary skill in the art when presented with Cliff and Cleary would have no reason to create an invention of the sort described by the instant invention and set out in Claim 16 and, more particularly, one that provides a graphical representation of a first transition pattern with graphical indicia thereon representing each of the audio speakers, wherein the transition pattern creates an impression of movement.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim 16 is improper and should be withdrawn.

Turning next to the rejection of Claim 17, it is said that Cliff discloses a method according to Claim 16 wherein said indicia of said audio speakers are at least approximately spaced apart on said computer display device proportionally to an actual spacing of said audio speakers. It is further said that both Cliff and Cleary disclose figures containing representations of only two speakers, hence no matter how they are presented on the display they will always be proportionally spaced with respect to the actual spacing of the speakers. (Applicants have commented on this last statement previously.)

In response, applicants could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that complementary transition patterns might be selected for use between two audio works, wherein each pattern provides an audible impression of movement in its respective



work. As a consequence, a person of ordinary skill in the art when presented with Cliff and Cleary would have no reason to create an invention of the sort described by the instant invention and set out in Claim 17 and, more particularly, on that provides a graphical representation of a first transition pattern with graphical indicia thereon representing each of the audio speakers, wherein the transition pattern creates an impression of movement of a sound source.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim 17 is improper and should be withdrawn.

Turning next to the rejection of Claim 18, it is said that Cliff discloses a method according to Claim 14 in view of Cleary wherein step (f) comprises the step of displaying on a computer display device said graphical representation of said first transition pattern during the playing of said first audio work, wherein said display operates at least approximately in real-time and wherein said displayed graphical representation is continuously updated to reflect the operation of said first transition pattern. It is further said that it is implied that the graphical display of Cleary continuously updates the information being displayed.

In response, applicants could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that complementary transition patterns might be selected for use between two audio works, wherein each pattern provides an audible impression of movement in its respective audio work. As a consequence, the combination of Cliff and Cleary does not yield the applicants' invention and, more particularly, does not yield an invention that displays a transition selected according to the instant invention in real-time.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim 18 is improper and should be withdrawn.

Turning next to the rejection of Claim 19, it is said that Cliff discloses a method according to Claim 11 wherein at least a portion of the first transition pattern is provided by a user. It is further said that it is implied that cross faders allow a DJ to manually adjust signal levels in a transition between multiple audio works.

In response, applicants would state once again that they could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that complementary transition patterns might be selected for use between two audio works, wherein each pattern provides an audible impression of sound source movement in its respective audio work. As a consequence, the combination of Cliff and Cleary does not yield the applicants' invention and, more particularly, does not yield an invention wherein a user supplies a first transition pattern of the sort described in Claim 11.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim 19 is improper and should be withdrawn.

Turning next to the rejection of Claim 20, it is said that Cliff discloses a method according to Claim 11 wherein at least a portion of the second transition pattern is provided by a user. It is further said that it is implied that cross faders allow a DJ to manually adjust signal levels in a transition between multiple audio works.

In response, applicants would state once again that they could find no teaching or suggestion in Cliff or Cleary – alone or in combination – that complementary transition patterns might be selected for use between two audio works, wherein each pattern provides an audible impression of movement in its respective audio work. As a consequence, the combination of

Cliff and Cleary does not yield the applicants' invention and, more particularly, does not yield an invention wherein a user supplies a second transition pattern of the sort described in Claim 11.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim 20 is improper and should be withdrawn.

Claims 3 and 13 stand as rejected under 35 USC 103(a) as being unpatentable over Cliff (US 2002/0172379 A1) as applied to Claim 1, and further in view of Clemow (US 6,577,736 B1) and Raydon et al. (US 3,969,588).

First with respect to Claim 3, it is said that Clemow discloses a system that allows different patterns of fading of an audio signal such as a front-to-back transition and a left side to right side transition pattern. It is further said that Raydon discloses a system that allows different patterns of fading of an audio signal such as a circling transition pattern. It is further said that at the time of the invention it would have been obvious to a person of ordinary skill in the art to use the fading patterns of Clemow and Raydon in the cross fading of Cliff.

In reply, applicants would note as an initial matter that Clemow is not concerned with transitions between two audio works. The word "transition" occurs only once in this patent document, and that in connection with the description of Figure 10b, wherein he indicates that there are "no transition points where the rate of change of crossfade suddenly reverses...". Col. 6, lines 52-59. Of course, this text is just referring to the general shape of the curves in that figure. Applicants could not find a single instance where Clemow considered the sort of song-to-song transition between audio works that is the subject of the instant application. Thus, as best as the applicants can determine the Examiner's statement that Clemow discloses a "transition

pattern” is not a correct statement of the disclosure of that patent as it pertains to the instant invention. This aspect of Clemow merely recites some well-known patterns of fading out an audio work. Similarly, Raydon is concerned exclusively with manipulating an audio signal so that the sound appears to move relative to the transducers. Once again, the word “transition” does not appear within Raydon as far as the applicants could determine. Raydon never teaches or suggests that his technique might be applied to the transition between two audio works as is suggested by the instant invention.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim 3 is improper and should be withdrawn.

Turning next to the instant rejection of Claim 13, it is said that Cliff discloses a method according to Claim 11, however Cliff is said not to disclose expressly wherein said first transition pattern is selected from a group consisting of a front-to-back transition pattern, a left side to right side transition pattern, or a circling transition pattern. It is further said that Clemow discloses different patterns of fading of an audio signal such as a front-to-back transition pattern and a left side to right side transition pattern. Raydon is said to disclose a system that allows different patterns of fading an audio signal such as a circling transition pattern.


In reply, applicants would once again assert that neither Clemow nor Raydon use the term “transition” in the sense called for by the instant application. More particularly, neither Clemow nor Raydon teach or suggest the use of a “transition pattern” in the sense of replacing a first audio work with a second. As such, the combination of Clemow and Raydon do not suggest this, nor does Cliff – either singly or in combination with – Clemow and Raydon applicants method.

Thus, it is believed that at least for all of the above reasons the instant rejection of Claim 13 is improper and should be withdrawn.

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In view of the foregoing, the applicants believe that the rejections and objections offered by the Examiner have been overcome and should be withdrawn. The claims as-filed are in condition for allowance and should be passed to the issue branch. Early and favorable action is earnestly solicited.

Respectfully submitted,

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